

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALABAMA POWER COMPANY,  
GEORGIA POWER COMPANY,  
SOUTHERN COMPANY SERVICES, INC.,  
subsidiaries of the Southern Company,

Defendants.

Civil Action No.

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges:

1. This is a civil action brought against the Defendant pursuant to Sections 113(b)(2) and 167 of the Clean Air Act ("the Act"), 42 U.S.C. § 7413(b)(2) and 7477, for injunctive relief and the assessment of civil penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions and the New Source Performance Standards ("NSPS") of the Act, 42 U.S.C. §§ 7470-92 and 7411, respectively. Defendants modified, and thereafter operated, their electric generating units at Barry, Bowen, Gorgas, Miller, and Scherer, coal-fired electricity generating

power plants in Jefferson, Mobile, and Walker Counties, Alabama, and Bartow and Monroe Counties, Georgia, without first obtaining appropriate permits authorizing this construction and without installing the best available control technology to control emissions of nitrogen oxides, sulfur dioxide, and particulate matter, as the Clean Air Act requires.

2. As a result of Defendants' operation of the power plants following these unlawful modifications and the absence of appropriate controls, massive amounts of sulfur dioxide ("SO<sub>2</sub>"), nitrogen oxides ("NO<sub>x</sub>"), and particulate matter have been, and still are being, released into the atmosphere aggravating air pollution locally and far downwind from these plants. Defendants' violations, alone and in combination with similar violations at other coal-fired electric power plants, have been significant contributors to some of the most severe environmental problems facing the nation today. An order of this Court directing these Defendants, forthwith, to install and operate the best available technology to control these pollutants, in conjunction with orders being sought in similar cases involving other coal-fired electrical power plants in the midwest and southern United States being filed by the United States concurrent with the filing of this complaint, will produce an immediate and dramatic improvement in the quality of air breathed by millions of Americans downwind of these plants. Such an order, in conjunction with others sought simultaneously with the filing of this complaint, will reduce illness, protect lakes and streams from further degradation due to the fallout from acid precipitation, and allow the environment to restore itself following years, and in some cases decades, of illegal emissions.

3. Sulfur dioxide, nitrogen oxides, and particulate matter when emitted into the air can have adverse environmental and health impacts. Electric utility plants collectively account for

about 70 percent of annual SO<sub>2</sub> emissions and 30 percent of NO<sub>x</sub> emissions in the United States. SO<sub>2</sub> interacts in the atmosphere to form sulfate aerosols, which may be transported long distances through the air. Most sulfate aerosols are particles that can be inhaled. In the eastern United States, sulfate aerosols make up about 25 percent of the inhalable particles and according to recent studies, higher levels of sulfate aerosols are associated with increased sickness and mortality from lung disorders, such as asthma and bronchitis. Lowering sulfate emissions from electric utility plants may significantly reduce the incidence and the severity of asthma and bronchitis and associated hospital admissions and emergency room visits.

4. Nitrogen oxides are major producers of ground level ozone, which scientists have long recognized as being harmful to human health. Nitrogen oxides, transformed into ozone, may cause decreases in lung function (especially among children who are active outdoors) and respiratory problems leading to increased hospital admissions and emergency room visits. Human lungs may be inflamed and permanently damaged by ozone. Nitrogen oxides are also transformed into nitrogen dioxide ("NO<sub>2</sub>"), a dangerous pollutant which can cause people to have difficulty breathing by constricting lower respiratory passages; it may weaken one's immune system, causing increased susceptibility to pulmonary and other forms of infections. While children and asthmatics are the primary sensitive populations, individuals suffering from bronchitis, emphysema, and other chronic pulmonary diseases are also predisposed to sensitivity to NO<sub>x</sub> exposure. Nitrogen oxides also react with other pollutants and sunlight to form photochemical smog, which in turn contributes to haze and reduces visibility.

5. Sulfur dioxide and NO<sub>x</sub> interact in the atmosphere with water and oxygen to form nitric and sulfuric acids, commonly known as acid rain. Acid rain, which also comes in the form

of snow or sleet, “acidifies” lakes and streams rendering them uninhabitable by aquatic life, and it damages trees at high elevations. Acid precipitation accelerates the decay of building materials and paints, including irreplaceable buildings, statues, and sculptures that are part of our nation’s cultural heritage. Sulfur dioxide and NO<sub>x</sub> gases and their particulate matter derivatives, sulfates and nitrates, contribute to visibility degradation and impact public health. In this civil action, the United States intends to reduce dramatically, the amount of SO<sub>2</sub> and NO<sub>x</sub> that certain electric utility plants have been illegally releasing into the atmosphere. If the injunctive relief requested by the United States is imposed, many acidified lakes and streams will improve so that they may once again support fish and other forms of aquatic life. Visibility will improve, allowing for increased enjoyment of scenic vistas throughout the eastern half of our country. Stress to our forests from Maine to Georgia will be reduced. Deterioration of our historic buildings and monuments will be slowed. In addition, reductions in SO<sub>2</sub> and NO<sub>x</sub> will reduce sulfates, nitrates, and ground level ozone, leading to improvements in public health.

6. Particulate matter is the term for solid or liquid particles found in the air. Smaller particulate matter of a diameter of 10 micrometers or less is referred to as PM-10. Power plants are a major source of particulate matter. Breathing particulate matter at concentrations in excess of existing ambient air standards may increase the chances of premature death, damage to lung tissue, cancer, or respiratory disease. The elderly, children, and people with chronic lung disease, influenza, or asthma, tend to be especially sensitive to the effects of particulate matter. Particulate matter could also make the effects of acid precipitation worse, reducing visibility and damaging man-made materials. Reductions in PM illegally released into the atmosphere by the

defendants and others will significantly reduce the serious health and environmental effects caused by PM in our atmosphere.

#### JURISDICTION AND VENUE

7. This Court has jurisdiction of the subject matter of this action pursuant to Sections 113(b) and 167 of the Act, 42 U.S.C. §§ 7413(b) and 7477, and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

8. Venue is proper in this District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because all of the Defendants reside in this District, two Defendants have their principal places of business in this district, violations occurred in this District, and two facilities are located in this District.

#### NOTICES

9. The United States is providing notice of the commencement of this action to the States of Alabama and Georgia as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

#### THE DEFENDANTS

10. Defendants Alabama Power Company (“Alabama Power”), Georgia Power Company (“Georgia Power”), and Southern Company Services, Inc. (“SCS”), are wholly owned subsidiaries of Southern Company (“Southern”), a Delaware corporation with headquarters in Atlanta, Georgia, and doing business in the States of Alabama and Georgia. Defendants Alabama Power and Georgia Power each own 50% of the outstanding common stock of Southern Energy Generation Company (“SEGCO”), a corporation doing business in Alabama and Georgia.

11. Defendant Georgia Power is a Georgia corporation doing business in Alabama and Georgia. Defendant Georgia Power undertakes such business by, among other things, operating electric generating facilities within the States of Alabama and Georgia, and providing electric capacity and energy to a shared system maintained and operated by Defendant SCS which is distributed within the states. Accordingly, Defendant Georgia Power maintains substantial and continuous contacts with the State of Alabama.

12. Defendants Alabama Power and SCS are Alabama corporations doing business in Alabama and Georgia. Defendant Alabama Power undertakes such business by, among other things, operating electric generating facilities within the state of Georgia, and providing electric capacity and energy to a shared system which is distributed within the state. Defendant SCS does business in the state of Georgia by, among other things, controlling the distribution of electric capacity and energy contributed by the Southern operating affiliates to systems within the state. Accordingly, Defendants Alabama Power and SCS maintain substantial and continuous contacts with the State of Georgia.

13. SEGCO owns electric generating units at Plant Gaston on the Coosa River near Wilsonville, Alabama, and Defendants Alabama Power and Georgia Power are each entitled to one-half of SEGCO's capacity and energy. Defendant Alabama Power acts as SEGCO's agent in the operation of SEGCO's units and furnishes coal to SEGCO as fuel for its units. SEGCO also owns three 230,000 volt transmission lines extending from Plant Gaston to the Georgia state line at which point connection is made with Defendant Georgia Power's transmission line system.

14. The transmission facilities of each of the Southern Company operating affiliates, including Defendants Alabama Power, Georgia Power, and SEGCO are connected to the

respective company's own generating plants and other sources of power and are interconnected with the transmission facilities of the other operating affiliates and SEGCO by means of heavy-duty high voltage lines.

15. Operating contracts covering arrangements in effect with principal neighboring utility systems provide for capacity exchanges, capacity purchases and sales, transfers of economy energy and other similar transactions. Additionally, the Southern Company operating affiliates, including Defendants Alabama Power and Georgia Power, have entered into voluntary reliability agreements with electric power companies located in other southern states including Florida, North Carolina, Tennessee, South Carolina and Virginia, each of which provides for the establishment and periodic review of principles and procedures for planning and operation of generation and transmission facilities, maintenance schedules, load retention programs, emergency operations, and other matters affecting the reliability of bulk power supply. Southern Company's operating affiliates, including Defendants Alabama Power and Georgia Power, have joined with other utilities in the Southeast (including those referred to above) to form the Southeastern Electric Reliability Council ("SERC") to augment further the reliability and adequacy of bulk power supply. Through the SERC, the operating affiliates are represented on the National Electric Reliability Council.

16. An intra-system interchange agreement provides for coordinating operations of the power producing facilities of the operating affiliates, including Defendants Alabama Power, Georgia Power, and SEGCO, and the capacities available to such companies from non-affiliated sources and for the pooling of surplus energy available for interchange. Coordinated operation of the entire interconnected system is conducted through a central power supply coordination office

maintained by Defendant SCS. The available sources of energy are allocated to the operating affiliates, including Defendants Alabama Power and Georgia Power, to provide the most economical sources of power consistent with good operation. The resulting benefits and savings are apportioned among the Southern Company operating affiliates.

17. Defendant SCS has contracted with Southern, each operating affiliate, including Defendants Alabama Power and Georgia Power, various of the other subsidiaries, and SEGCO to furnish, at cost and upon request, the following services: general executive and advisory services, power pool operations, general engineering, design engineering, purchasing, accounting, finance and treasury, taxes, insurance and pensions, corporate, rates, budgeting, public relations, employee relations, systems and procedures and other services with respect to business and operations.

18. Defendant SCS, acting on behalf of Defendants Alabama Power, Georgia Power, and other Southern operating affiliates, also has a contract with the Southeastern Power Administration (“SEPA”) (a federal power marketing agency) providing for the use of those companies' facilities at government expense to deliver to certain cooperatives and municipalities, entitled by federal statute to preference in the purchase of power from SEPA, quantities of power equivalent to the amounts of power allocated to them by SEPA from certain United States Government hydroelectric projects.

19. At all times relevant to this Complaint, Defendant Alabama Power, owned and operated Plant Barry, a coal fired electric generation plant in Mobile County, Alabama. Barry generates electricity from five steam generating boilers which are designated as Barry Units 1 through 5.



20. At all times relevant to this Complaint, Defendant Alabama Power, owned and operated Plant Gorgas, a coal fired electric generation plant in Walker County, Alabama. Gorgas generates electricity from five steam generating boilers which are designated as Gorgas Units 6 through 10.

21. At all times relevant to this Complaint, Defendant Alabama Power, owned and operated Plant James H. Miller, Jr. ("Miller"), a coal fired electric generation plant in Jefferson County, Alabama. Miller generates electricity from four steam generating boilers which are designated as Miller Units 1 through 4.

22. At all times relevant to this Complaint, Defendant Georgia Power, owned and operated Plant Bowen, a coal fired electric generation plant in Bartow County, Georgia. Bowen generates electricity from four steam generating boilers which are designated as Bowen Units 1 through 4.

23. At all times relevant to this Complaint, Defendant Georgia Power, owned and operated Plant Scherer, a coal fired electric generation plant in Monroe County, Georgia. Scherer generates electricity from four steam generating boilers which are designated as Bowen Units 1 through 4.

24. At all times relevant to this Complaint, Defendant SCS, has operated Plants Barry, Bowen, Gorgas, Miller, and Scherer.

25. The Defendants are "persons" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

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## STATUTORY BACKGROUND

26. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population.

Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

### The National Ambient Air Quality Standards

27. Section 109 of the Act, 42 U.S.C. § 7409, requires the Administrator of EPA to promulgate regulations establishing primary and secondary national ambient air quality standards ("NAAQS" or "ambient air quality standards") for those air pollutants ("criteria pollutants") for which air quality criteria have been issued pursuant to Section 108, 42 U.S.C. § 7408. The primary NAAQS are to be adequate to protect the public health, and the secondary NAAQS are to be adequate to protect the public welfare, from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air.

28. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is an "attainment" area. An area that does not meet the NAAQS is a "nonattainment" area. An area that cannot be classified due to insufficient data is "unclassifiable."

29. At times relevant to this complaint, Barry, Bowen, Gorgas, Miller, and Scherer were located in areas that had been classified as attainment or unclassifiable for one or more of the following pollutants: NO<sub>x</sub>, SO<sub>2</sub>, PM-10, and PM.

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### The Prevention of Significant Deterioration Requirements

30. Part C of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration ("PSD") of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. These provisions are referred to herein as the "PSD program."

31. Section 165(a) of the Act, 42 U.S.C. § 7475(a), among other things, prohibits the construction and operation of a "major emitting facility" in an area designated as attainment unless a permit has been issued that comports with the requirements of Section 165, including the requirement that the facility be installed to operate the best available control technology for each pollutant subject to regulation under the Act that is emitted from the facility. Section 169(1) of the Act, 42 U.S.C. § 7479(1), designates fossil-fuel fired steam electric plants of more than two hundred and fifty million British thermal units ("BTUs") per hour heat input and that emit or have the potential to emit one hundred tons per year or more of any pollutant to be "major emitting facilities."

32. Section 169(2)(C) of the Act, 42 U.S.C. § 7479(2)(C), defines "construction" as including "modification" (as defined in Section 111(a) of the Act). "Modification" is defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a), to be "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant

emitted by such source or which results in the emission of any air pollutant not previously emitted.”

#### New Source Performance Standards

33. Section 111(b)(1)(A) of the Act, 42 U.S.C. § 7411(b)(1)(A), requires the Administrator of U.S. EPA to publish a list of categories of stationary sources that emit or may emit any air pollutant. The list must include any categories of sources which are determined to cause or significantly contribute to air pollution which may endanger public health or welfare.

34. Section 111(b)(1)(B) of the Act, 42 U.S.C. § 7411(b)(1)(B), requires the Administrator of U.S. EPA to promulgate regulations establishing federal standards of performance for new sources of air pollutants within each of these categories. "New sources" are defined as stationary sources, the construction or modification of which is commenced after the publication of the regulations or proposed regulations prescribing a standard of performance applicable to such source. 42 U.S.C. § 7411(a)(2). These standards are known as New Source Performance Standards (“NSPS”)

35. Section 111(e) of the Act, 42 U.S.C. § 7411(e), prohibits an owner or operator of a new source from operating that source in violation of a NSPS after the effective date of the applicable NSPS to such source.

36. Pursuant to Sections 111 and 114 of the Act, 42 U.S.C. §§ 7411, 7414, EPA promulgated 40 C.F.R. Part 60, Subpart A, §§ 60.1 - 60.19, which contains general provisions regarding NSPS.

37. Section 60.1 states that the provisions of 40 C.F.R. Part 60 apply to the owner or operator of any stationary source which contains an affected facility, the construction or

modification of which is commenced after the publication in Part 60 of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility. 40 C.F.R. § 60.1.

38. Section 60.2 defines "affected facility" as any apparatus to which a standard is applicable. 40 C.F.R. § 60.2.

39. Pursuant to Section 111(b)(1)(A) of the Act, 42 U.S.C. § 7411(b)(1)(A), at 40 C.F.R. §§ 60.40a-49a (Subpart Da), EPA has identified electric utility steam generating units as one category of stationary sources that cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare.

40. EPA's general NSPS provisions, referred to in paragraph above, apply to owners or operators of any stationary source that contains an "affected facility" subject to regulation under 40 C.F.R. Part 60. EPA has also promulgated NSPS for various industrial categories, including electric utility steam generating units. NSPS requirements for electric utility steam generating units for which construction or modification is commenced after September 18, 1978, are codified at 40 C.F.R. Part 60, Subpart Da, §§ 60.40a-49a.

41. The "affected facilities" to which Subpart Da applies are each "electric utility steam generating unit" that is capable of combusting more than 73 megawatts (250 million Btu/hour) heat input of fossil fuel (either alone or in combination with any other fuel) and for which construction or modification is commenced after September 18, 1978. 40 C.F.R. § 60.40a.

42. Under Subpart Da, "steam generating unit" means any furnace, boiler, or other device, other than nuclear steam generators, used for combusting fuel for the purpose of

producing steam, including fossil-fuel-fired steam generators associated with combined cycle gas turbines. 40 C.F.R. § 60.41a.

43. An “electric utility steam generating unit”, under Subpart Da, means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts (“MW”) electrical output to any utility power distribution system for sale. 40 C.F.R. § 60.41a.

44. Section 111(e) of the Act, 42 U.S.C. § 7411(e), prohibits the operation of any new source in violation of an NSPS applicable to such source. Thus, a violation of an NSPS is a violation of Section 111(e) of the Act.

45. Pursuant to 40 C.F.R. § 60.7(a), any owner or operator of an affected facility subject to NSPS must furnish written notification to EPA of, among other things, the date of construction of an affected facility no later than 30 days after such date.

46. Pursuant to 40 C.F.R. § 60.8, the owner or operator of an affected facility that is an electric utility steam generating unit must conduct a performance test in accordance with 40 C.F.R. § 60.48a within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility, and furnish EPA a written report of the results of such performance test.

47. An owner and operator of an affected facility under subpart Da is required to install, calibrate, maintain and operate a continuous monitoring system, and record the output of the system for measuring SO<sub>2</sub> and NO<sub>x</sub> emissions. 40 C.F.R. § 60.47a(b) and (c).

48. Pursuant to 40 C.F.R. §§ 60.49a(b) and (i), the owner or operator of an electric utility steam generating unit subject to Subpart Da must submit quarterly reports to EPA containing certain emissions information.

49. Pursuant to 40 C.F.R. §§ 60.43a(a) and 60.44a(a), the owner or operator of an electric utility steam generating unit subject to Subpart Da, may not discharge into the atmosphere from the affected facility any gases which contain SO<sub>2</sub> or NO<sub>x</sub>, respectively, in excess of the applicable limitations.

#### ENFORCEMENT PROVISIONS

50. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides that “Except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter . . . the Administrator may ... bring a civil action in accordance with subsection (b) of this section . . . .”

51. Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day of violation for violations occurring on or before January 30, 1997 and \$27,500 per day for each such violation occurring after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, against any person whenever such person has violated, or is in violation of, requirements of the Act other than those specified in Section 113(b)(1), 42 U.S.C. § 7413(b)(1), including violations of Section 165(a), 42 U.S.C. § 7475(a) and Section 111, 42 U.S.C. § 7411.

52. Section 167 of the Act, 42 U.S.C. § 7477, authorizes the Administrator to initiate an action for injunctive relief, as necessary to prevent the construction, modification or operation of a major emitting facility which does not conform to the PSD requirements.

53. At all times pertinent to this civil action, Plants Barry, Gorgas, Miller, Bowen, and Scherer were each a “major emitting facility” and a “major stationary source” within the meaning of the Act for NO<sub>x</sub>, SO<sub>2</sub>, PM-10, and PM. Each unit at each plant is an “affected facility” that is subject to the requirements of NSPS.

**FIRST CLAIM FOR RELIEF**  
( PSD Violations: Modifications at Barry)

54. Paragraphs 1 through 53 are realleged and incorporated herein by reference.

55. At various times, Defendants Alabama Power and SCS commenced construction of modifications, as defined in the Act, at Barry. These modifications included, but are not limited to installation of a new design spiral fin economizer in Unit 5 in 1993. Defendants constructed additional modifications to the plant other than those described in this paragraph.

56. Defendants Alabama Power and SCS violated and continue to violate Section 165(a) and 167 of the Act, 42 U.S.C. §§ 7475(a) and 7477, by, among other things, undertaking such “modifications” and continuing to operate its facility without (1) obtaining a PSD permit; and (2) applying best available control technology for NO<sub>x</sub>, SO<sub>2</sub>, and PM, as required.

57. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

58. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendants Alabama Power



and SCS to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

**SECOND CLAIM FOR RELIEF**  
( PSD Violations: Modifications at Gorgas)

59. Paragraphs 1 through 53 are realleged and incorporated herein by reference.

60. At various times, Defendants Alabama Power and SCS commenced construction of “modifications,” as defined in the Act, at Gorgas. These “modifications” included, but are not limited to: (1) a balance draft conversion in 1985; and, (2) installation of a new design spiral fin economizer in 1994; and a major upgrade of air heaters in 1994. Defendants constructed additional modifications to the plant other than those described in this paragraph.

61. Defendants Alabama Power and SCS violated and continue to violate Section 165(a) and 167 of the Act, 42 U.S.C. §§ 7475(a) and 7477, by, among other things, undertaking such “modifications” and continuing to operate its facility without (1) obtaining a PSD permit; and (2) applying best available control technology for NO<sub>x</sub>, SO<sub>2</sub> and PM, as required.

62. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

63. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendants Alabama Power and SCS to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant

to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

THIRD CLAIM FOR RELIEF

( PSD Violations: Construction at Miller Unit 3 Without a Permit )

64. Paragraphs 1 through 53 are realleged and incorporated herein by reference.

65. Defendants Alabama Power and SCS commenced construction of Miller Unit 3 after August 7, 1977. Hence, they were required to comply with Section 165 of the Act, 42 U.S.C. § 7475.

66. Defendants Alabama and SCS violated and continue to violate Section 165(a) and 167 of the Act, 42 U.S.C. §§ 7475(a) and 7477, by, among other things, undertaking such construction and continuing to operate the facility without (1) obtaining a PSD permit; and (2) applying best available control technology for NO<sub>x</sub>, SO<sub>2</sub>, and PM, as required.

67. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

68. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendants Alabama Power and SCS to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

FOURTH CLAIM FOR RELIEF

( PSD Violations: Construction at Miller Unit 4 Without a Permit )

69. Paragraphs 1 through 53 are realleged and incorporated herein by reference.

70. Defendants Alabama Power and SCS commenced construction of Miller Unit 4 after August 7, 1977. Hence, they were required to comply with Section 165 of the Act, 42 U.S.C. § 7475.

71. Defendants Alabama Power and SCS violated and continue to violate Section 165(a) and 167 of the Act, 42 U.S.C. §§ 7475(a) and 7477, by, among other things, undertaking such construction and continuing to operate the facility without (1) obtaining a PSD permit; and (2) applying best available control technology for NO<sub>x</sub>, SO<sub>2</sub>, and PM, as required.

72. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

73. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendants Alabama Power and SCS to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

#### FIFTH CLAIM FOR RELIEF

( NSPS Violations: Construction at Miller Unit 3)

74. Paragraphs 1 through 53 are realleged and incorporated herein by reference.

75. Defendants Alabama Power and SCS are the "owners or operators," within the meaning of Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of an electric utility steam generating unit within the meaning of 40 C.F.R. §§ 60.40a and 60.41a, designated Miller Unit 3.

76. Defendants Alabama Power and SCS commenced construction of Miller Unit 3 after September 18, 1978. Hence, Unit 3 was and is subject to NSPS Subpart Da requirements.

77. Defendants Alabama Power and SCS have failed to comply with Subpart Da requirements at Miller Unit 3 by, including but not limited to, failing to conduct a performance test in accordance with 40 C.F.R. § 60.48a within 60 days after achieving the maximum production rate at the facility or furnishing EPA a written report of the results of such performance test.

78. Each day that Defendants Alabama Power and SCS fail to comply with NSPS requirements at Miller Unit 3 is a violation of Section 111(e) of the Act, 42 U.S.C. § 7411(e).

79. Such violation subjects Defendants Alabama Power and SCS to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, 42 U.S.C. § 7413(b)(2), and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701. Unless enjoined by this Court, Defendants Alabama Power and SCS will continue to violate the requirements of the NSPS and the Act.

#### SIXTH CLAIM FOR RELIEF

( NSPS Violations: Construction at Miller Unit 4)

80. Paragraphs 1 through 53 are realleged and incorporated herein by reference.

81. Defendants Alabama Power and SCS are the "owners or operators," within the meaning of Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of an electric utility steam generating unit within the meaning of 40 C.F.R. §§ 60.40a and 60.41a, designated Miller Unit 4.

82. Defendants Alabama Power and SCS commenced construction of Miller Unit 4 after September 18, 1978. Hence, Unit 4 was and is subject to NSPS Subpart Da requirements.

83. Defendants Alabama Power and SCS have failed to comply with Subpart Da requirements at Miller Unit 4 by, including but not limited to, failing to conduct a performance test in accordance with 40 C.F.R. § 60.48a within 60 days after achieving the maximum production rate at the facility or furnishing EPA a written report of the results of such performance test.

84. Each day that Defendants Alabama Power and SCS fail to comply with NSPS requirements at Miller Unit 4 is a violation of Section 111(e) of the Act, 42 U.S.C. § 7411(e).

85. Such violation subjects Defendants Alabama Power and SCS to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, 42 U.S.C. § 7413(b)(2), and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701. Unless enjoined by this Court, Defendants Alabama Power and SCS will continue to violate the requirements of the NSPS and the Act.

**SEVENTH CLAIM FOR RELIEF**  
( PSD Violations: Modifications at Bowen)

86. Paragraphs 1 through 53 are realleged and incorporated herein by reference.

87. At various times, Defendants Georgia Power and SCS commenced construction of modifications, as defined in the Act, at Bowen. These modifications included, but are not limited to: installation of a new economizer in Unit 2 in 1992. Defendants constructed additional modifications to the plant other than those described in this paragraph.

88. Defendants Georgia Power and SCS violated and continue to violate Section 165(a) and 167 of the Act, 42 U.S.C. §§ 7475(a) and 7477, by, among other things, undertaking such modifications and continuing to operate its facility without (1) obtaining a PSD permit; and (2) applying best available control technology for NO<sub>x</sub>, SO<sub>2</sub>, and PM, as required.

89. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

90. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendants Georgia Power and SCS to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

#### EIGHTH CLAIM FOR RELIEF

( PSD Violations: Construction at Scherer Unit 3)

91. Paragraphs 1 through 53 are realleged and incorporated herein by reference.

92. Defendants Georgia Power and SCS commenced construction at Scherer Unit 3 after August 7, 1977. Hence, they were required to comply with Section 165 of the Act, 42 U.S.C. § 7475.

93. Defendants Georgia Power and SCS violated and continue to violate Section 165(a) and 167 of the Act, 42 U.S.C. §§ 7475(a) and 7477, by, among other things, undertaking such construction and continuing to operate the facility without (1) obtaining a PSD permit; and (2) applying best available control technology for NO<sub>x</sub>, SO<sub>2</sub>, and PM, as required.

94. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

95. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendants Georgia Power and SCS to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

NINTH CLAIM FOR RELIEF

( PSD Violations: Construction at Scherer Unit 4)

96. Paragraphs 1 through 53 are realleged and incorporated herein by reference.

97. Defendants Georgia Power and SCS commenced construction at Scherer Unit 4 after August 7, 1977. Hence, they were required to comply with Section 165 of the Act, 42 U.S.C. § 7475.

98. Defendants Georgia Power and SCS violated and continue to violate Section 165(a) and 167 of the Act, 42 U.S.C. §§ 7475(a) and 7477, by, among other things, undertaking such construction and continuing to operate the facility without (1) obtaining a PSD permit; and (2) applying best available control technology for NO<sub>x</sub>, SO<sub>2</sub>, and PM, as required.

99. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

100. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendants Georgia

Power and SCS to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

TENTH CLAIM FOR RELIEF

( NSPS Violations: Construction at Scherer Unit 3)

101. Paragraphs 1 through 53 are realleged and incorporated herein by reference.

102. Defendants Georgia Power and SCS are the "owners or operators," within the meaning of Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of an electric utility steam generating unit within the meaning of 40 C.F.R. §§ 60.40a and 60.41a, designated Scherer Unit 3.

103. Defendants Georgia Power and SCS commenced construction of Scherer Unit 3 after September 18, 1978. Hence, Unit 3 was and is subject to NSPS Subpart Da requirements.

104. Defendants Georgia Power and SCS have failed to comply with Subpart Da requirements at Scherer Unit 3 by, including but not limited to, failing to conduct a performance test in accordance with 40 C.F.R. § 60.48a within 60 days after achieving the maximum production rate at the facility or furnishing EPA a written report of the results of such performance test.

105. Each day that Defendants Georgia Power and SCS fail to comply with NSPS requirements at Scherer Unit 3 is a violation of Section 111(e) of the Act, 42 U.S.C. § 7411(e).

106. Such violation subjects Defendants Georgia Power and SCS to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, 42 U.S.C.



§ 7413(b)(2), and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701. Unless enjoined by this Court, Defendants Georgia Power and SCS will continue to violate the requirements of the NSPS and the Act.

**ELEVENTH CLAIM FOR RELIEF**  
( NSPS Violations: Construction at Scherer Unit 4)

107. Paragraphs 1 through 53 are realleged and incorporated herein by reference.

108. Defendants Georgia Power and SCS are the "owners or operators," within the meaning of Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of an electric utility steam generating unit within the meaning of 40 C.F.R. §§ 60.40a and 60.41a, designated Scherer Unit 4.

109. Defendants Georgia Power and SCS commenced construction of Scherer Unit 4 after September 18, 1978. Hence, Unit 4 was and is subject to NSPS Subpart Da requirements.

110. Defendants Georgia Power and SCS have failed to comply with Subpart Da requirements at Scherer Unit 4 by, including but not limited to, failing to conduct a performance test in accordance with 40 C.F.R. § 60.48a within 60 days after achieving the maximum production rate at the facility or furnishing EPA a written report of the results of such performance test.

111. Each day that Defendants Georgia Power and SCS fail to comply with NSPS requirements at Scherer Unit 4 is a violation of Section 111(e) of the Act, 42 U.S.C. § 7411(e).

112. Such violation subjects Defendants Georgia Power and SCS to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, 42 U.S.C.

§ 7413(b)(2), and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701. Unless enjoined by this Court, Defendants Georgia Power and SCS will continue to violate the requirements of the NSPS and the Act.

#### PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations contained in paragraphs 1 through 112 above, the United States of America requests that this Court:

1. Permanently enjoin the Defendants Alabama Power and SCS from operating Plants Barry, Gorgas, and Miller, including the construction of future modifications, except in accordance with the Clean Air Act and any applicable regulatory requirements;
2. Permanently enjoin the Defendants Georgia Power and SCS from operating Plants Bowen and Scherer including the construction of future modifications, except in accordance with the Clean Air Act and any applicable regulatory requirements;
3. Order each Defendant to remedy its past violations by, among other things, requiring it to install, as appropriate, the best available control technology on the plants that it owns or operates for each pollutant subject to regulation under the Clean Air Act;
4. Order Defendants Alabama Power and SCS to apply for permits for the Barry, Gorgas, and Miller facilities that are in conformity with the requirements of the PSD program;
5. Order Defendants Georgia Power and SCS to apply for permits for the Bowen, and Scherer facilities that are in conformity with the requirements of the PSD program;
6. Order each Defendant to comply with the NSPS provisions of the Act;

7. Order each Defendant to conduct audits of all of its operations to determine whether any other modifications have occurred that would require it to meet the requirements of PSD and NSPS and report the results of the audits to the United States;

8. Order each Defendant to take other appropriate actions to remedy, mitigate, and offset the harm to public health and the environment caused by the violations of the Clean Air Act alleged above;

9. Assess a civil penalty against the Defendants of up to \$25,000 per day for each violation of the Clean Air Act and applicable regulations, and \$27,500 per day for each such violation after January 30, 1997;

10. Award Plaintiff its costs of this action; and

11. Grant such other relief as the Court deems just and proper.

Respectfully Submitted,

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